(2006) 08 DEL CK 0173

In the Delhi High Court

Case No : Writ Petition (C) No''s. 6853-6855 of 2005 and 13155-13161 of 2006 and C.M. No''s. 10172 and 10173 of 2006

Vishnu and Co. Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Citation : (2006) 08 DEL CK 0173

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : M.P. Devnath and R.K. Masija, for the Appellant; Sanjeev Sachdeva and Preet Pal Singh, for the Respondent

Final Decision : Disposed Off

Judgement

1. 23-8-2006, CM No. 10173/2006 (Exemption) Allowed, subject to all just exceptions. CM stands disposed of. WPC No. 13155-61/2006 and CM No. 10172/2006 (stay).

2. The Petitioners are aggrieved by an order, dated 18th April, 2006 passed by the Principal Bench of the Customs, Excise and Service Tax Appellate Tribunal in Stay Application Nos. E/514-520/06 in Appeal Nos. E/589-595/06. By the impugned order each of the Petitioners were required to make a pre-deposit as a condition precedent to the hearing of their respective appeals and time was given to them to make the pre-deposit. The matter was listed for compliance of the impugned order on 17th July, 2006 but learned Counsel for the Petitioners states that in view of the failure of the Petitioners to comply with the impugned order, the appeals filed by the Petitioners were dismissed. He makes an oral prayer that the order dated 17th July, 2006 may also be set aside in case the writ petitions are allowed.

3. After hearing learned Counsel for the Respondents in the matter, we find that the prayer made by learned Counsel for the Petitioner is reasonable and ought to

be considered.

4. In so far as the correctness of the impugned order is concerned, the allegation made against the Petitioners was of clandestine removal of ''Gutkha'' under the brand name ''Vimal''. When the matter came to light, the departmental authorities investigated it and recorded the statements of several persons said to have been involved in the clandestine removal including employees of some transport companies. Thereafter, a show cause notice was issued to the Petitioners as to why the goods be not confiscated and duty amount recovered and penalty imposed upon the Petitioners. During the adjudication proceedings, the Petitioners were allowed to cross-examine the witnesses, some of whom had appeared before the Commissioner of Central Excise.

5. The grievance of learned Counsel for the Petitioners is that all those persons whose statements were recorded during investigation did not appear before the Commissioner and Therefore he was unable to cross-examine them. He submits that some of those persons later retracted from the statements given by them but these were not considered by the Commissioner who adjudicated the matter and imposed duties and penalties against the Petitioners.

6. Feeling aggrieved, the Petitioners filed appeals before the CESTAT and along with the appeals they moved applications for waiver of the condition of pre-deposit. After hearing the parties, the learned Tribunal dismissed the applications but directed the Petitioners to deposit 50% of the penalty imposed or individuals while waiving the entire amount of penalty imposed on Petitioner No. 1. The entire duty demanded by the departmental authority was, however, directed to be deposited.

7. In this writ petition challenging the order passed by the CESTAT, it is submitted by learned Counsel for the Petitioners that adequate opportunity was not given to the Petitioners to cross-examine some of the persons who were involved in the investigation and the Tribunal had taken their statements into consideration as if they were cross-examined.

8. It is also submitted that Petitioner No. 1 has already deposited a sum of Rs. 1 crore out of a total duty amount of Rs. 2.75 crores imposed on Petitioner No. 1.

9. We have heard learned Counsel for the parties and perused the impugned order as well as the connected papers. The CESTAT considered the matter at great length and found, on a prima facie view, that the Petitioners had not made out any case in their favor. On the other hand, it held that there was ample evidence to show that the Petitioners had clandestinely removed ''Vimal Gut-kha'' on the basis of transport challans issued by non-existent firms.

10. It is true that the Petitioners had deposited a sum of Rs. 1 crore towards the duty demanded but, as noted by the CESTAT, the balance sheet furnished by the Petitioners before the Tribunal did not inspire much confidence. The Tribunal felt that there was reason to believe that the Petitioners had siphoned off

considerable amounts money from Petitioner No. 1 and that there was a systematic erosion of its assets. Looking to all these facts, we are of the view that the impugned order of the CESTAT does not warrant any modification in so far as the payment of duty is concerned, except to the extent that instead of the Petitioners being required to deposit the required balance duty about Rs. 1.75 crores, we think it would be in the interest of justice if the Petitioners are directed to deposit a sum of Rs. 1 crore in cash and to furnish a bank guarantee for the balance amount of Rs. 75,15,400/- within a period of six weeks. We are making this modification in view of the fact that learned Counsel for the Petitioners has stated, quite candidly, that his clients may not be able to raise such a huge amount in cash. Needless to say, the bank guarantee will have to be furnished by the Petitioners to the satisfaction of the concerned Commissioner, Central Excise and will be kept alive during the pendency of the appeals. In so far as personal penalty on the individual Petitioners are concerned, the Petitioners (other than the Petitioner No. 1) will furnish sureties for the penalty amounts to the satisfaction of the Commissioner of the Central Excise within a period of six weeks from today. The matter be listed before the CESTAT on 16th October, 2006 for compliance by the Petitioners of our order. In case the Petitioners comply with our order, the Tribunal may restore the appeals to their original number, hear and dispose them of on merits.

The writ petition is disposed of.

